An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

IN THE SUPREME COURT OF THE STATE OF NEVADA

AMBER FITZPATRICK,
Appellant,
vs.
BRIAN FITZPATRICK,
Respondent.

No. 65902

FILED

MAR 13 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a fast track child custody appeal from a district court order denying a motion to relocate to Texas with the minor child. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

At the time of their 2006 divorce, the parties agreed that appellant would have primary physical custody of their minor child, with respondent having visitation. In May 2013, appellant filed a motion to relocate with the child to Texas because she wanted to be closer to her boyfriend who lived there. After conducting an evidentiary hearing, the district court denied the motion on August 13, 2013.

Eight months later on April 2, 2014, appellant filed another motion to relocate to Texas. Appellant asserted many of the same arguments as those in her prior motion, and additionally argued that she had become engaged to her boyfriend.[1] The district court denied the motion without an evidentiary hearing, and this appeal followed.

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[1]Appellant made additional arguments that respondent was behind in payments on the child's school tuition, respondent had recently parted with his girlfriend, and that appellant had reason to believe that respondent had begun drinking alcohol again based on conversations with friends and pictures she had seen. These allegations were either unsupported or did not warrant an evidentiary hearing.

15-07806

Having considered the record on appeal and the parties' arguments, we conclude that the district court did not abuse its discretion in denying appellant's motion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (stating that matters of custody rest within the district court's sound discretion). The district court determined that appellant's engagement status pertained to the threshold showing that appellant had a good faith reason for the request to relocate, which appellant had already established in her prior motion. *See Flynn v. Flynn*, 120 Nev. 436, 441, 92 P.3d 1224, 1227 (2004). Further, when denying the prior motion, the district court determined that the factors under *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991), regarding whether the move would improve the child's quality of life did not support relocation. In the underlying motion, appellant reiterated similar facts and arguments that had already been litigated and denied in conjunction with her prior relocation request and did not otherwise show a substantial change in circumstances since the previous order. *See generally McMonigle v. McMonigle*, 110 Nev. 1407, 1408, 887 P.2d 742, 743 (1994) (providing that the moving party must demonstrate a substantial change of circumstances since the most recent custodial order); *see also Castle v. Simmons*, 120 Nev. 98, 103-04, 86 P.3d 1042, 1046 (2004) (recognizing that the changed circumstances requirement for custody modifications serves to prevent repetitive, serial motions based on essentially the same facts). Thus, appellant failed to set forth a prima facie case for relocation since the prior order, and the district court did not abuse its discretion in denying appellant's motion without an evidentiary hearing. *See Rooney v. Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993) (explaining what is required to make a prima facie case for

custody modification, and that absent such a showing, an evidentiary hearing is not required). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_______________, J.
Parraguirre

_______________, J.
Douglas

_______________, J.
Cherry

cc: Hon. Mathew Harter, District Judge
Pecos Law Group
Black & LoBello
Eighth District Court Clerk